

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Asheville/Bryson City Division

In re)		
)	Case no.	10-10684
POWER DEVELOPMENT, LLC,)		
)	Chapter	11
Debtor.)		

**DEBTORS' RESPONSE AND OBJECTION TO THE MOTION TO DISMISS BY THE
BANKRUPTCY ADMINISTRATOR AND AS JOINED BY APPLIED BANK**

NOW COMES the Debtor in Possession (DIP), Power Development, LLC, responding to the Motion to Dismiss filed by the Bankruptcy Administrator (BA) on September 2, 2010 and to the joinder to that motion as filed by creditor Applied Bank (Applied) on September 14, 2010 as follows:

1. Admitted.
2. Admitted.
3. Admitted. The DIP has now filed the monthly reports and paid the quarterly fees for the second quarter of 2010.
4. Denied. The DIP has provided proof of insurance coverage to the BA and contends that it has complied with the provisions of the Operating Order with respect to insurance coverage.
5. Admitted. The DIP has now filed the requested amendments.
6. Admitted.

IN FURTHER RESPONSE, the Debtor alleges and says the following:

1. That there has been a genuine issue regarding the scope of insurance coverage and that the DIP has acted in good faith regarding insurance coverage.
2. That the DIP has multiple possible feasible plans to inject cash into the company in order to reorganize, including, but not limited to: injection of new capital from an investor; proceeds from the settlement of a large pending civil lawsuit regarding a sprinkler system failure in which liability has already been established; damages from an adversary proceeding against the successor in interest to Silverton Bank for breach of contract; proceeds from sales of units in its flagship property, The Residences at Biltmore (TRAB); and proceeds from the rent of the many units it owns at TRAB.

3. That, since filing, the DIP has been the subject of relentless requests, demands, and allegations from multiple parties and has done its best to address them in a full and timely fashion. That the DIP's principals consist of an attorney with an active and busy law practice and a contractor approaching retirement. These principals have acted in good faith and to the best of their abilities to satisfy the ongoing demands while attempting to address the substantive issues involved in creating a feasible reorganization plan and keeping their respective professional and personal lives intact.
4. That there is a legitimate and material question as to Applied's standing in this action; that the DIP contends that Applied and its principals have not acted in good faith (FN1); that its joinder to the BA's motion is both self-serving and irrelevant to the concerns addressed in the BA's motion; and that, in any event, the DIP contends that the BA's concerns have now been sufficiently addressed.

WHEREFORE, the DIP respectfully requests that the BA's motion be DENIED.

THIS, the 20th day of September, 2010.

KIGHT LAW OFFICE, PC

By: /s/

D. RODNEY KIGHT, JR.
Attorney for the DIP
7 Orchard Street, Suite 100
Asheville, NC 28801
(828) 255-9881
(828) 255-9886 facsimile
info@kightlaw.com

1 The DIP does not make allegations regarding good faith lightly. As referenced in the transcript of the Rule 2004 Examination of David Payne, a principal of the DIP, the principal/President of Applied personally threatened him during a meeting, stating that a truck with no brakes was heading down a hill directly at him. Additionally, it has come the DIP's attention that Applied may have colluded with members of the DIP's management company to withhold funds in an attempt to "starve out" the DIP and/or its principals. These are among the allegations in a related lawsuit currently pending in the civil courts and the subject of an anticipated adversary proceeding in this proceeding.

CERTIFICATE OF SERVICE:

I certify that the BA and Applied have been served with this Objection by sending a copy through the US Postal Service in a postage prepaid, properly addressed envelope.

THIS, the 17th day of September, 2010.

/s/

TERRI PIERCE, legal assistant to
D. Rodney Kight, Jr.